

Adopted	Rejected
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COMMITTEE REPORT

YES:	10
NO:	0

MR. SPEAKER:

Your Committee on Financial Institutions, to which was referred House Bill 1660, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:

- 1 Page 4, line 28, delete "a fixed".
- 2 Page 11, line 3, strike "subdivision" and insert "**subsection**".
- 3 Page 12, line 19, delete "if:" and insert "if **any of the following**
- 4 **apply:**".
- 5 Page 12, line 20, delete "all" and insert "All".
- 6 Page 14, line 8, before "the" insert "**Any of**".
- 7 Page 14, line 31, delete "the" and insert "The".
- 8 Page 19, line 24, reset in roman "as many as twenty-five".
- 9 Page 19, line 25, reset in roman "percent (25%) of all".
- 10 Page 19, line 26, reset in roman "The offices shall".
- 11 Page 19, line 27, reset in roman "be selected at random."
- 12 Page 19, line 30, after "subsection." insert "**If an office submits a**
- 13 **compliance report indicating material noncompliance with this**
- 14 **chapter, the securities division may conduct a follow-up**
- 15 **examination of the office. A follow-up examination under this**

subsection must be limited to the areas of noncompliance indicated in the compliance report submitted by the office. The securities division shall conduct a follow-up examination under this subsection not later than twelve (12) months after the securities division notifies the office that the office has taken sufficient corrective actions to address the areas of noncompliance indicated in the compliance report. For purposes of the twenty-five percent (25%) annual limit on the number of Indiana home and branch offices that may be randomly selected for a compliance report under this subsection, the securities division shall treat a follow-up examination of an office under this subsection as an examination of a separate office, with each follow-up examination conducted reducing the number of other offices that may be randomly selected for a compliance examination by one (1).".

Page 19, line 33, after "subsection" insert ", or as a result of a follow-up examination under this subsection,".

Page 19, after line 33, after "examination" insert "or follow-up examination".

Page 20, reset in roman lines 10 through 24.

Page 31, after line 35, begin a new paragraph and insert:

"SECTION 11. IC 27-1-15.6-35 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 35. (a) As used in this section, "securities commissioner" refers to the commissioner appointed by the secretary of state under IC 23-2-1-15.

(b) The commissioner may conduct investigations, enforce actions, and take other official action that the commissioner considers appropriate to ensure compliance with IC 27-4-1-4(28) concerning the sale of variable annuity contracts. In acting under this section, the commissioner may consult with the securities commissioner and may use the resources of the securities commissioner in making a final determination of any issue concerning compliance with IC 27-4-1-4(28) concerning the sale of variable annuity contracts.

(c) If the securities commissioner is informed of a violation or suspected violation of IC 27-4-1-4(28) concerning the sale of variable annuity contracts or of the insurance laws and rules of the state, the securities commissioner shall timely advise the

commissioner of the violation or suspected violation.

SECTION 12. IC 27-4-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement:

(A) misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon;

(B) making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies;

(C) making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;

(D) using any name or title of any policy or class of policies misrepresenting the true nature thereof; or

(E) making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender the policyholder's insurance.

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive, or misleading.

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial

1 condition of an insurer, and which is calculated to injure any
2 person engaged in the business of insurance.

3 (4) Entering into any agreement to commit, or individually or by
4 a concerted action committing any act of boycott, coercion, or
5 intimidation resulting or tending to result in unreasonable restraint
6 of, or a monopoly in, the business of insurance.

7 (5) Filing with any supervisory or other public official, or making,
8 publishing, disseminating, circulating, or delivering to any person,
9 or placing before the public, or causing directly or indirectly, to
10 be made, published, disseminated, circulated, delivered to any
11 person, or placed before the public, any false statement of
12 financial condition of an insurer with intent to deceive. Making
13 any false entry in any book, report, or statement of any insurer
14 with intent to deceive any agent or examiner lawfully appointed
15 to examine into its condition or into any of its affairs, or any
16 public official to which such insurer is required by law to report,
17 or which has authority by law to examine into its condition or into
18 any of its affairs, or, with like intent, willfully omitting to make a
19 true entry of any material fact pertaining to the business of such
20 insurer in any book, report, or statement of such insurer.

21 (6) Issuing or delivering or permitting agents, officers, or
22 employees to issue or deliver, agency company stock or other
23 capital stock, or benefit certificates or shares in any common law
24 corporation, or securities or any special or advisory board
25 contracts or other contracts of any kind promising returns and
26 profits as an inducement to insurance.

27 (7) Making or permitting any of the following:

28 (A) Unfair discrimination between individuals of the same
29 class and equal expectation of life in the rates or assessments
30 charged for any contract of life insurance or of life annuity or
31 in the dividends or other benefits payable thereon, or in any
32 other of the terms and conditions of such contract; however, in
33 determining the class, consideration may be given to the nature
34 of the risk, plan of insurance, the actual or expected expense of
35 conducting the business, or any other relevant factor.

36 (B) Unfair discrimination between individuals of the same
37 class involving essentially the same hazards in the amount of
38 premium, policy fees, assessments, or rates charged or made

for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; however, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:

(i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;

(ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or

(iii) policies or contracts of any other kind or kinds of insurance whatsoever.

However, nothing contained in clause (C) shall be construed to apply to any of the kinds of insurance referred to in clauses (A) and (B) nor to reinsurance in relation to such kinds of insurance. Nothing in clause (A), (B), or (C) shall be construed as making or permitting any excessive, inadequate, or unfairly discriminatory charge or rate or any charge or rate determined by the department or commissioner to meet the requirements of any other insurance rate regulatory law of this state.

(8) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract or policy of insurance of any kind or kinds whatsoever, including but not in limitation, life annuities, or agreement as to such contract or policy other than as plainly expressed in such contract or policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the

1 contract, or any special favor or advantage in the dividends,
2 savings, or other benefits thereon, or any valuable consideration
3 or inducement whatever not specified in the contract or policy; or
4 giving, or selling, or purchasing or offering to give, sell, or
5 purchase as inducement to such insurance or annuity or in
6 connection therewith, any stocks, bonds, or other securities of any
7 insurance company or other corporation, association, limited
8 liability company, or partnership, or any dividends, savings, or
9 profits accrued thereon, or anything of value whatsoever not
10 specified in the contract. Nothing in this subdivision and
11 subdivision (7) shall be construed as including within the
12 definition of discrimination or rebates any of the following
13 practices:

14 (A) Paying bonuses to policyholders or otherwise abating their
15 premiums in whole or in part out of surplus accumulated from
16 nonparticipating insurance, so long as any such bonuses or
17 abatement of premiums are fair and equitable to policyholders
18 and for the best interests of the company and its policyholders.

19 (B) In the case of life insurance policies issued on the
20 industrial debit plan, making allowance to policyholders who
21 have continuously for a specified period made premium
22 payments directly to an office of the insurer in an amount
23 which fairly represents the saving in collection expense.

24 (C) Readjustment of the rate of premium for a group insurance
25 policy based on the loss or expense experience thereunder, at
26 the end of the first year or of any subsequent year of insurance
27 thereunder, which may be made retroactive only for such
28 policy year.

29 (D) Paying by an insurer or insurance producer thereof duly
30 licensed as such under the laws of this state of money,
31 commission, or brokerage, or giving or allowing by an insurer
32 or such licensed insurance producer thereof anything of value,
33 for or on account of the solicitation or negotiation of policies
34 or other contracts of any kind or kinds, to a broker, an
35 insurance producer, or a solicitor duly licensed under the laws
36 of this state, but such broker, insurance producer, or solicitor
37 receiving such consideration shall not pay, give, or allow credit
38 for such consideration as received in whole or in part, directly

- 1 or indirectly, to the insured by way of rebate.
- 2 (9) Requiring, as a condition precedent to loaning money upon the
3 security of a mortgage upon real property, that the owner of the
4 property to whom the money is to be loaned negotiate any policy
5 of insurance covering such real property through a particular
6 insurance producer or broker or brokers. However, this
7 subdivision shall not prevent the exercise by any lender of the
8 lender's right to approve or disapprove of the insurance company
9 selected by the borrower to underwrite the insurance.
- 10 (10) Entering into any contract, combination in the form of a trust
11 or otherwise, or conspiracy in restraint of commerce in the
12 business of insurance.
- 13 (11) Monopolizing or attempting to monopolize or combining or
14 conspiring with any other person or persons to monopolize any
15 part of commerce in the business of insurance. However,
16 participation as a member, director, or officer in the activities of
17 any nonprofit organization of insurance producers or other
18 workers in the insurance business shall not be interpreted, in itself,
19 to constitute a combination in restraint of trade or as combining to
20 create a monopoly as provided in this subdivision and subdivision
21 (10). The enumeration in this chapter of specific unfair methods
22 of competition and unfair or deceptive acts and practices in the
23 business of insurance is not exclusive or restrictive or intended to
24 limit the powers of the commissioner or department or of any
25 court of review under section 8 of this chapter.
- 26 (12) Requiring as a condition precedent to the sale of real or
27 personal property under any contract of sale, conditional sales
28 contract, or other similar instrument or upon the security of a
29 chattel mortgage, that the buyer of such property negotiate any
30 policy of insurance covering such property through a particular
31 insurance company, insurance producer, or broker or brokers.
32 However, this subdivision shall not prevent the exercise by any
33 seller of such property or the one making a loan thereon of the
34 right to approve or disapprove of the insurance company selected
35 by the buyer to underwrite the insurance.
- 36 (13) Issuing, offering, or participating in a plan to issue or offer,
37 any policy or certificate of insurance of any kind or character as
38 an inducement to the purchase of any property, real, personal, or

1 mixed, or services of any kind, where a charge to the insured is
 2 not made for and on account of such policy or certificate of
 3 insurance. However, this subdivision shall not apply to any of the
 4 following:

5 (A) Insurance issued to credit unions or members of credit
 6 unions in connection with the purchase of shares in such credit
 7 unions.

8 (B) Insurance employed as a means of guaranteeing the
 9 performance of goods and designed to benefit the purchasers
 10 or users of such goods.

11 (C) Title insurance.

12 (D) Insurance written in connection with an indebtedness and
 13 intended as a means of repaying such indebtedness in the event
 14 of the death or disability of the insured.

15 (E) Insurance provided by or through motorists service clubs
 16 or associations.

17 (F) Insurance that is provided to the purchaser or holder of an
 18 air transportation ticket and that:

19 (i) insures against death or nonfatal injury that occurs during
 20 the flight to which the ticket relates;

21 (ii) insures against personal injury or property damage that
 22 occurs during travel to or from the airport in a common
 23 carrier immediately before or after the flight;

24 (iii) insures against baggage loss during the flight to which
 25 the ticket relates; or

26 (iv) insures against a flight cancellation to which the ticket
 27 relates.

28 (14) Refusing, because of the for-profit status of a hospital or
 29 medical facility, to make payments otherwise required to be made
 30 under a contract or policy of insurance for charges incurred by an
 31 insured in such a for-profit hospital or other for-profit medical
 32 facility licensed by the state department of health.

33 (15) Refusing to insure an individual, refusing to continue to issue
 34 insurance to an individual, limiting the amount, extent, or kind of
 35 coverage available to an individual, or charging an individual a
 36 different rate for the same coverage, solely because of that
 37 individual's blindness or partial blindness, except where the
 38 refusal, limitation, or rate differential is based on sound actuarial

principles or is related to actual or reasonably anticipated experience.

(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.

(18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan coverage for victims of abuse.

(22) Violating IC 27-8-26 concerning genetic screening or testing.

(23) Violating IC 27-1-15.6-3(b) concerning licensure of insurance producers.

(24) Violating IC 27-1-38 concerning depository institutions.

(25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning the resolution of an appealed grievance decision.

(26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or IC 27-8-5-19.2.

(27) Violating IC 27-2-21 concerning use of credit information.

(28) An insurance producer, or an insurer in any case in which a producer is not involved, recommending to a senior consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions that are unsuitable, as defined by the department in an adopted rule, for the senior consumer on the basis of the facts disclosed by the senior consumer concerning the senior consumer's:

(A) investments and other insurance products; and

(B) financial situation and needs.

A recommendation of an insurance producer or an insurer is not an unfair method of competition or an unfair and

1 **deceptive act or practice under this section if the**
2 **recommendation is made in compliance with the National**
3 **Association of Securities Dealers Conduct Rules concerning**
4 **suitability, as determined by the commissioner. As used in this**
5 **section, "senior consumer" means an individual who is at least**
6 **sixty-five (65) years of age. In the case of a joint purchase by**
7 **more than one (1) party, the purchaser is considered a senior**
8 **consumer if any of the parties is at least sixty-five (65) years**
9 **of age."**

(Reference is to HB 1660 as introduced.)

and when so amended that said bill do pass.

Representative Burton